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10/689,308

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Kate E. Nordland

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NEW YORK, NY 10112-4498

EXAMINER

BRADEN, SHAWN M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,308

Applicant(s)

NORLAND ET AL.

Examiner

Shawn M. Braden

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/25/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 and 64-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 and 64-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8,11-14,17-32,34-38,40,64-67,69-75 and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oman (USPN 2,001,810) in view of Buchalski (USPN 5,816,484).

With respect to claims 1,15,29,35,64 and 72, Oman discloses the invention substantially as claimed. However, Oman does not disclose a polymeric container that is an integrally formed, non-foldable, continuous body portion with a rim encompassing and projecting laterally outwardly from the continuous body portion.

Buchalski teaches that it is known in the art to provide a one piece polymeric container that is integrally formed for the purpose of cheaper construction than cardboard (col. 1, ln.47) and that one piece polymeric container does not allow food to leak through the container when stored for a substantial period of time (col. 1, ln. 53). Buchalski further teaches an analogous container with a continuous body portion with a rim (89) encompassing and projecting laterally outwardly from the continuous body portion for the purpose of improved stacking, or to preclude wedge jamming of the nested containers (col. 5 ln. 39-45).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Oman as a one piece polymeric container that is integrally formed with a rim encompassing and projecting laterally outwardly from the continuous body portion, as taught by Buchalski in order to cut cost, improve moisture resistance and to improve stackability.

Also, Tang (USPN 5,685,478) also teaches a well known folded cardboard container and changing the construction to a one piece polymeric container that is integrally formed for the purpose of saving material and making the container washable, microwaveable and recyclable (col. 1 ln. 58 – col. 2 ln. 11)

3. With respect to claims 2 and 3, Oman further shows handles openings in the major flaps 44. Oman discloses the claimed invention except for open able handle portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have open able handle portions since the Examiner takes Official Notice of the equivalence of openable handles and handle openings for their use in the art and the selection of any of these known equivalents to provide handles on the Oman container would be within the level of ordinary skill in the art.

4. With respect to claims 4,5,19 and 20, Oman shows an opening on the first minor flap (46) for securing and the same opening (47) on the second minor flap.

5. With respect to claims 6,7,21 and 22, Oman shows that both major flaps have securing portions composed of outward protrusions or hooks (55,56,57,58).

6. With respect to claims 8,23,67 and 75, Oman shows the same fifth and sixth fold as applicant describes (fig 1).

7. With respect to claims 11 and 26, Oman as applied above shows a rectangularly shaped container (fig. 1).
8. With respect to claim 12 Buchalski as applied above shows a continuous rim (89)
9. With respect to claims 13, 14, 27, 28, 34, 40, 69 and 77, Oman and Buchalski as applied above discloses the claimed invention except for the thickness of the container as claimed. It would have been an obvious matter of design choice to provide the thickness of the container, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).
10. With respect to claim 16 Oman shows a continuous sidewall (fig. 1)
11. With respect to claims 17, 18, 31, 32, 37, 38, 65, 66, 73 and 74, Oman as applied above shows handle openings (42, 43) in the major flaps that are adapted to form a handle when the container is closed. Oman discloses the claimed invention except for openable handle portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have openable handles portions since the Examiner takes Official Notice of the equivalence of openable handles and handle openings for their use in the art and the selection of any of these known equivalents to provide handles on the Oman container would be within the level of ordinary skill in the art.

The examiner's statement of well-known in the art is taken to be prior art because applicant has not held said well-known statement in contention.

12. With respect to claims 30,36,70,71,78 and 79, Oman as applied above shows the first 38 and second 39 minor flaps are substantially identical and that the first 58 and second 60 major flaps are substantially identical (fig.1).

13. Claims 9,10,33,39,68 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oman (USPN 2,001,810) and Buchalski (USPN 5,816,484) as applied to claim 1 above, and further in view of Suh (USPN 5,106,882). Oman and Buchalski as applied to claim 1, discloses the invention substantially as claimed. However, Oman and Buchalski do not specifically disclose the material, from which the container being made is alkenyl aromatic polymer foam.

Suh teaches a foam insulation material that is dimensionally stable (col. 1 ln.1-15). Suh's teachings are used in the field of endeavor, insulation.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container using Suh's material of insulating alkenyl aromatic polymer foam in order to have an insulating container with accurate dimensions so the walls and flaps aligned and fit together accurately.

Response to Argument

14. Applicant's arguments filed 4/25/2006 have been fully considered but they are not persuasive.

Examiner believes applicant is incorrect by arguing that Buchalski's step (89) does not define a laterally projecting rim to which the flaps are integrally connected as

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claimed. Applicants citing of column 5, lines 20-23 is not discussing the step, the passage is dealing with the different embodiments of the container therefore it has no relevance to the step (89). Column 5 lines 33-45 clearly disclose the step and its functions.

The added verbiage pertaining to the rim in claim 15, does not prove novelty over the prior art of record since Buchalski shows a rim (89) encompassing and projecting laterally outwardly from the sidewall (fig. 7). Buchalski also shows a rim (89) along the fourth fold line and having a portion which overlies the rim when the container is in a closed position, the second major flap being located opposite of the first major flap (fig. 7).

15. With respect to the added verbiage of the outer periphery of the rim in claim 29, does not prove novelty over the prior art of record since Buchalski shows a first minor flap integrally connected to the outer periphery of the rim (89).

16. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

In response to applicants request for an interview, applicant should fill out an Applicant Initiated Interview Request Form (MPEP 713.01) and submit it to examiner.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMB


JES F. PASCUA
PRIMARY EXAMINER